

House File 2044 - Introduced

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BY JACOBY

A BILL FOR

- 1 An Act relating to claims arising from state employees
- 2 committing sexual harassment in the workplace.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 669.21, subsection 2, Code 2018, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *c.* The duty to defend and the duty to
4 indemnify and hold harmless shall not apply if the claim arises
5 from the employee committing sexual harassment in the workplace
6 in violation of state or federal law.

7 Sec. 2. Section 669.22, Code 2018, is amended to read as
8 follows:

9 **669.22 Actions in federal court.**

10 The state shall defend any employee, and shall indemnify and
11 hold harmless an employee of the state in any action commenced
12 in federal court under 42 U.S.C. §1983 against the employee for
13 acts of the employee while acting in the scope of employment.
14 The duty to indemnify and hold harmless shall not apply and the
15 state shall be entitled to restitution from an employee if the
16 employee fails to cooperate in the investigation or defense of
17 the claim or demand, or if, in an action commenced by the state
18 against the employee, it is determined that the conduct of the
19 employee upon which the claim or demand was based constituted
20 a willful and wanton act or omission or malfeasance in
21 office. The duty to defend and the duty to indemnify and hold
22 harmless shall not apply if the claim arises from the employee
23 committing sexual harassment in the workplace in violation of
24 federal law.

25 **EXPLANATION**

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 Under current law, the state has waived sovereign immunity
29 for certain tort claims, which are defined as monetary,
30 pursuant to the Iowa tort claims Act, Code chapter 669. Under
31 current law, if a state employee is acting within the scope of
32 the employee's office or employment, the state will defend and
33 will indemnify and hold harmless the employee or the state will
34 be substituted as the defendant in place of the employee. Thus
35 under current law, unless the employee is acting outside the

1 scope of the employee's office or employment, the employee is
2 not personally liable for torts.

3 In accordance with the Iowa civil rights Act, Code chapter
4 216, and federal law, it is unlawful for state employees to
5 engage in sexual harassment in the workplace. This bill
6 removes the state protection of an employee in a tort action if
7 the claims arise out of the state employee committing sexual
8 harassment in the workplace in violation of state or federal
9 law. Under the bill, a state employee would be personally
10 liable if sued for sexual harassment in the workplace. The
11 state would not defend the state employee and the state
12 employee would be liable for the plaintiff's attorney fees and
13 damages.